

Boston Redevelopment Authority

James E. Cofield, Jr./Board Member

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Boston, Massachusetts 02201
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December 14, 1978

Mr. Robert L. Farrell, Chairman
Boston Redevelopment Authority
One City Hall Plaza
Boston, Massachusetts 02201

Dear Bob:

I have reviewed the position paper prepared by the Committee for An Open Review Process (The Committee) and the other documents submitted to the Authority concerning the Villa Victoria II Housing Development. In that regard, I am particularly concerned about the letter attached to The Committee's statement submitted by their legal counsel to the Authority in September.

I was not aware of the letter from Thomas Bracken and Michael Baram of Bracken, Selig and Baram prior to our November 30th Board meeting, nor did I have any knowledge of the questions which they raised regarding certain legal issues. Also, you will remember that at the November 30th Board meeting, there was no discussion of these issues or of the fact that these issues had been drawn into question. Thus the purpose of this letter is to indicate that, in my opinion, the issues raised by Bracken and Baram are material, that the Authority should give proper consideration to these issues, and that we should therefore reconsider the votes taken at our last Board meeting concerning the subject development.

Without attempting to summarise Baram and Bracken's letter, I will point out their contention that in an earlier suit (in 1975) before the Federal District Court, the Judge refused the relief requested by the plaintiffs, because he found, based on HUD's statements, that "the planning reveals no expectation of substantial further federal assistance as to the remainder of parcel 19." The development now contemplated certainly calls for further federal assistance on parcel 19, and I believe it to be substantial federal assistance. Moreover, it is my understanding that such units were being planned at least as early as 1975.

Additionally, the Baram and Bracken letter raises a number of issues which suggest that the Authority is obligated to comply with the State environmental review requirements (MEPA), and that, at the very least, we have an implied obligation to see that an environmental impact statement is prepared and reviewed prior to the Authority granting the approvals being sought for the proposed Villa Victoria II Housing Development.

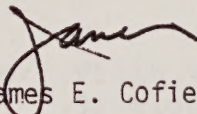
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It is my considered opinion that the issues raised in the Baram and Bracken correspondence are substantive and that this Authority more than any other agency ought to ensure that a neighborhood development plan is a proper one and that the appropriate regulations are followed. I have no information which suggests that these issues were addressed at the staff level, and clearly, they were not even discussed by the Board.

In view of the above I think it is incumbent upon the Authority to review the issues raised by Baram and Bracken and to reconsider the actions taken at the Authority's last meeting concerning the subject development. Please find attached a copy of the Baram and Bracken letter.

Very truly yours,


James E. Cofield, Jr.

JEC/je

BRACKEN, SELIG AND BARAM

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September 20, 1978

Robert Farrell, Chairman
Boston Redevelopment Authority
New City Hall
Boston, MA 02201

Re: Villa Victoria II Housing
Development
South End - Boston, Mass.

Dear Mr. Farrell:

This law firm represents the Committee For An Open Review Process (the "Committee"), a group of white, black and hispanic residents of the South End concerned with the development of their neighborhood.

The Committee is concerned with the proposed Victoria II housing project on Parcel 19 of the BRA's South End Urban Renewal Plan of 1965. Recently, HUD gave preliminary approval to the designated developer, Emergency Tenants Council Development Corp. (now called IBA), for financial assistance under Section 8 of the U.S. Housing and Community Development Act of 1974. We understand that the BRA Board has on its agenda for Thursday, September 21, the proposed demolition of twenty buildings on the site, some with historical significance, and a playground and park; conveyance of the site to the developer; closing existing streets and sidewalks and construction of new ones; and the rerouting of traffic and parking in the area.

In our opinion, the BRA legally may not take any of these actions until 1) it has complied with the State environmental review requirements, including specifically the preparation of an Environmental Impact Report as required by the Massachusetts Environmental Policy Act; 2) HUD has prepared an environmental impact statement (EIS) as required by the National Environmental Policy Act (NEPA) and other statutory obligations including the National Historic Preservation Act; 3) in light of such environmental reviews, the project is reconsidered and modified so as to comply with the provisions of the Housing and Community Development Act of 1974.

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This project clearly will cause "damage to the environment" as that term is used in MEPA and is a major federal action significantly affecting the human environment under NEPA. HUD's regulations provide that an EIS for a Section 8 project must be prepared where 500 or more housing units are involved, and such EIS must be included in the decision record and used in the decision-process according to NEPA. The Victoria II project clearly would bring the total number of HUD financed housing units on Parcel 19 to more than 500 units.

As you know, Parcel 19 has been developed by IBA in phases, all of which have been financially assisted by HUD. The first phase was the rehabilitation of 71 housing units. Next, an eighteen story housing tower for the elderly consisting of 203 units was constructed. The next phase was the rehabilitation of 36 units for low income families, known as Casa Boriquen. Then Victoria I, consisting of 181 units of low and moderate income housing, was built, bringing to 491 the number of federally assisted units on Parcel 19. The proposed Victoria II project would consist of an additional 207 units of subsidized housing for low income families. This would bring the total number of federally assisted housing units on this development parcel to 698. All of these housing units on Parcel 19, except for the elderly tower, are segregated--i.e., they are inhabited almost exclusively by Spanish speaking families. It is expected that if Victoria II is built similar families would live in all 207 units.

Despite the above plan for the redevelopment of Parcel 19, which calls for 698 federally funded housing units, the BRA has not prepared an EIR and HUD has not prepared an EIS on the plan or on any of their actions in connection with any components of the plan. Earlier, in 1975, a suit was filed by certain residents of the South End to require HUD to prepare an EIS. The Federal District Judge refused the relief requested by the plaintiffs because he found, based on HUD's statements, that "the planning reveals no expectation of substantial further federal assistance as to the remainder of Parcel 19."

Now HUD preliminarily has approved the "substantial further federal assistance" which the Judge implied would require compliance by HUD with the EIS requirement of NPEA. This action would make Parcel 19 as a matter of fact and as a matter of law a single project that meets HUD's own threshold

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criteria for full scale NEPA review. The substantial environmental effects on the human environment of the federal action on this parcel now, at last, must be addressed. Any actions by the BRA now as discussed above without complying with the NEPA and MEPA environmental reviews would violate federal and state environmental laws. A judicial decision enjoining HUD would also enjoin BRA and the developer.

The particular environmental effect of concern to the Committee which must be considered by HUD in an EIS and by the BRA in an EIR, is the adverse affect the Victoria II phase of the project may have on the social and environmental fabric of the community and the quality of life of the residents. Congress stated as statutory purposes in establishing the Section 8 Housing Assistance Program (42 U.S.C. 1437f) the "reduction of the isolation of income groups within communities and geographical areas" and the "spatial deconcentration of housing opportunities for persons of lower incomes." (Section 101(c)(6) of the Act, 42 U.S.C. 5301(c)(6)). The Act also requires that HUD's housing assistance be provided with the objective of "avoiding undue concentrations of assisted persons in areas containing a high proportion of low income persons." (Section 104(a)(4)(c), 42 U.S.C. 5304(a)(4)(c)). HUD's Section 8 regulations regarding site selection repeat the statutory language of Section 104(a)(4)(c) of the 1974 Act (24 CFR 880.112(c) and 881.112(c)) and also require that the site shall not be located "in areas of minority concentration." (24 CFR 881.112(b)).

A Task Force composed of officials of HUD's Region I Office, created to establish guidelines for application of HUD's Section 8 regulations to proposed projects in the South End, determined that any area in the City of Boston with more than 23% assisted persons should be considered an "undue concentration of assisted persons" and that any area with more than 39% of low income persons should be considered an area "containing a high proportion of low income persons." The HUD Task Force found that, under its criteria, the South End has more than 39% "assisted persons" and more than 45% "low income persons," thereby exceeding the thresholds established by its Task Force. Based on the Task Force Report, HUD's Area Economist, who is vested with independent review authority of projects proposed for HUD assistance, recommended rejection of the funding application for Victoria II.

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The proposed Victoria II project also violates additional regulations which HUD proposed under its Section 8 Housing Assistance Program on January 24, 1977 to further effectuate the site selection requirements of the 1974 Act as well as the Civil Rights Acts of 1964 and 1968. These proposed regulations define the phrases "minority concentration," "racially mixed area," and "area of undue concentration of federally assisted housing." The proposed regulations provide that a site is not suitable for HUD assistance if (a) the minority residents of the area constitute more than 40% of all residents of the area, (b) over 40% of the housing units in the area are federally assisted, or (c) additional federal assistance in an area would "distort a voluntary or court imposed plan...to assure equality of educational opportunity in...public schools, by causing a significant and disproportionate concentration of the locality's minority students in one or more of the public schools serving the site."

Information available to us shows that (a) minority residents of the South End constitute about 53% of all residents of the area, (b) about 50% of the housing units in the South End are federally assisted, low and moderate income units, and (c) the South End is under a court imposed plan to desegregate the public school system, which plan would be adversely effected by a significant increase of minority children into the public school system.

Based upon these requirements and criteria, federal financial assistance to allow construction in the South End of 207 new housing units for low-income persons of one ethnic origin would violate the provisions of the 1974 Act and HUD's regulations thereunder, as interpreted and applied by HUD's Region I Office, overrule the determination of HUD's Area Economist, and ignore HUD's determinations contained in its proposed regulations of January 24, 1974. Moreover, the BRA preliminary report of "Housing in the South End" issued April 1974 recommends against "additional subsidized housing developments within the South End Urban Renewal Area, beyond those presently in processing...." (p. 31). Victoria II was not listed as a project in process.

Therefore, before the BRA proceeds any further with this project, the Committee urges you to consider these statutory and regulatory requirements and the BRA's studies of subsidized housing in the South End and to comply with the environmental impact reporting requirements of MEPA by assessing through a full EIR the potential adverse affects on the human

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environment of the proposed Victoria II project. Incidentally, we are puzzled as to why the BRA has excluded Parcel 19 from the environmental study now being conducted by the BRA in connection with its announced "transition" from urban renewal to other programs in the South End. In the event HUD and the BRA do not comply with these legal requirements, we have been instructed by the Committee to take appropriate legal measures in the Federal District Court.

We would be pleased to discuss this matter with you or your representatives at their convenience.

Sincerely,

Thomas B. Bracken

Michael S. Baram

TBB:ds

cc: Patricia Harris, Secretary of HUD
Robert Ryan, BRA Director
Steven Coyle
Marvin Siflinger
Hon. Kevin White